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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919470-3182-01]

RIN 0648-BC58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Shrimp Fishery Off the Southern Atlantic States; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 9 (Amendment 9) to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the criteria and procedures by which a South Atlantic state may request a concurrent closure of the exclusive economic zone (EEZ) to the commercial harvest of penaeid shrimp (brown, pink, and white shrimp) when state waters close as a result of severe winter weather. Amendment 9 would also revise the overfished and overfishing status determination criteria for pink shrimp. The intent of this rule is to increase the flexibility and

timeliness of the criteria and process for implementing a concurrent closure of penaeid shrimp harvest in the EEZ to maximize protection of overwintering white shrimp in the South Atlantic.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2012-0227" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Kate Michie, Southeast Regional Office, NMFS,
263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment", then

enter "NOAA-NMFS-2012-0227" in the keyword search and click on "search". To view posted comments during the comment period, enter "NOAA-NMFS-2012-0227" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 9 may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or e-mail: kate.michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Under 50 CFR 622.35(d)(1), NMFS may close the EEZ adjacent to a South Atlantic state that has closed its waters to the harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Based on information from standardized assessments, if

a state has determined that unusually cold temperatures have resulted in at least an 80-percent reduction of the white shrimp population in its state waters, the state may request that the EEZ adjacent to its state waters concurrently close to the commercial harvest of penaeid shrimp. The specific criteria that a state must meet to request a concurrent closure of the adjacent EEZ waters is described in the FMP. Under the current procedures, once a state has determined that specific conditions have been met the state sends a request to close EEZ waters to penaeid shrimp harvest to the Council, and then the Council convenes its Shrimp Review Panel to review the state's request. If the Shrimp Review Panel's recommendation is affirmative, they forward their recommendation to the Council. The Council may then approve the state's request and send a letter to NMFS to request a harvest prohibition of penaeid shrimp in EEZ waters adjacent to the closed state waters. Once NMFS has determined that the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS implements the closure through a notification in the Federal Register. The closure will generally remain effective until the ending date of the state's closure, but may be ended earlier based on a request from the state.

During the closure, as specified in 50 CFR 622.35(d)(2), no

person may: (1) trawl for brown, pink, or white shrimp in the closed portion of the EEZ; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the closed portion of the EEZ, unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

Management Measures Contained in this Proposed Rule

The management measures contained in Amendment 9 and this proposed rule would not require any changes to the current regulatory text within § 622.35(d), "South Atlantic shrimp cold weather closure." This is because the current regulations refer to the FMP for the specific criteria and procedures required to implement a concurrent closure of the EEZ for penaeid shrimp. This rule would revise those criteria and procedures within the FMP, however, the regulatory text would not change.

Criteria Used to Trigger a State's Ability to Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest

This rule would revise the criteria that a state must meet

to request from NMFS a closure of commercial penaeid shrimp harvest in Federal waters following severe winter weather and a closure of state waters. Currently, a state must demonstrate at least an 80-percent reduction in the population of overwintering white shrimp in order to justify a closure. This rule would require that a state must demonstrate either at least an 80-percent reduction in the population of overwintering white shrimp or that state water temperatures were 9 °C (48 °F) or less, for at least 7 consecutive days. Additional details regarding the sampling methods a state may use for these determinations may be found in Amendment 9 and the FMP and are referenced in the regulatory text at 50 CFR § 622.35(d). These revised criteria would provide increased flexibility for a state to protect the overwintering white shrimp in a state's adjacent EEZ waters.

Process for a State to Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest

This rule would revise the procedures for a state to request a closure of the penaeid shrimp commercial sector in the EEZ concurrent with a closure of its state waters. Under the current procedures, a state may request a concurrent closure of penaeid shrimp harvest in the EEZ once a state has determined that specific conditions have been met. Following that

determination, the state sends a request to the Council, then the Council convenes its Shrimp Review Panel to review the state's request. If the review panel's recommendation is affirmative, the panel forwards its recommendation to the Council. If the Council approves the state's request, they send a letter to NMFS to request a concurrent closure of penaeid shrimp harvest in the EEZ waters adjacent to the requesting state. Once NMFS has determined that the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS implements the closure through a notification (temporary rule) in the Federal Register. This proposed rule would streamline these request procedures to reduce delays in closing the penaeid shrimp fishery, which may then yield biological benefits to the shrimp stock through a more timely closure. The revised procedures would allow a state, after determining that the revised concurrent closure criteria have been met, to submit a letter directly to the NMFS Regional Administrator (RA) with the request and supporting data for a concurrent closure of penaeid shrimp harvest in the EEZ adjacent to the closed state waters. After a review of the request and supporting information, if the RA determines the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS

would implement the closure through a notification in the Federal Register. These revised procedures would also reduce the administrative burden to the states and the Council through a more efficient process.

Additional Management Measure Contained in Amendment 9

Amendment 9 also revises the overfished and overfishing status determination criteria (biomass at the maximum sustainable yield (B_{MSY})) for the pink shrimp stock. B_{MSY} for pink shrimp was most recently revised in Amendment 6 to the Shrimp FMP (70 FR 73383, December 12, 2005). Amendment 6 established a B_{MSY} proxy for pink shrimp based on two thresholds: (a) if the stock diminishes to 1/2 of the maximum sustainable yield (MSY) abundance ($1/2 B_{MSY}$) in 1 year, or (b) if the stock is diminished below MSY abundance (B_{MSY}) for 2 consecutive years. A proxy for B_{MSY} was established for pink shrimp using catch per unit effort (CPUE) information from the Southeast Area Monitoring and Assessment Program (SEAMAP) survey program data as the lowest values in the period 1990-2003 that produced catches reaching MSY in the following year. In Amendment 9, the B_{MSY} proxy is revised based on more recent SEAMAP harvest data for pink shrimp. Specifically, Amendment 9 revises the B_{MSY} proxy for pink shrimp using the lowest CPUE value from SEAMAP during the period 1990-2011 (0.089 individuals per hectare).

The Council and NMFS determined that the pink shrimp stock size that produced the relatively low CPUE value of 0.089 individuals per hectare does not compromise the long term capacity of the pink shrimp stock to achieve MSY because the low stock size has historically produced a biomass the following year that is capable of achieving MSY based on the best available science.

Availability of Amendment 9

Additional background and rationale for the measures previously discussed are contained in Amendment 9. The availability of Amendment 9 was announced in the Federal Register on March 4, 2013 (78 FR 14069). Written comments on Amendment 9 must be received by May 3, 2013. All comments received on Amendment 9 or the proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purposes of the rule and Amendment 9 are to modify the criteria for a South Atlantic state to request a closure of Federal waters to commercial penaeid shrimp harvest, concurrent with closure of a state's waters to protect overwintering white shrimp, to streamline the process by which a state can request a concurrent closure, and to establish a B_{MSY} proxy for pink shrimp, which is used in determining the overfished and overfishing status. The objectives of the rule and Amendment 9 are to establish a more timely and efficient process for a state to request a concurrent closure of penaeid shrimp harvest in Federal waters adjacent to closed state waters to maximize protection of overwintering white shrimp during cold weather events, and to improve the accuracy of the biological parameters used for pink shrimp management. The Magnuson-Stevens Act serves as the legal basis for the rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including

fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

The actions in this rule are administrative in nature and thus would only generate indirect economic effects on commercial operations in the South Atlantic shrimp fishery. Specifically, the actions in this rule would make it easier for states to request a concurrent closure of the penaeid shrimp fishery by allowing them to use an additional criterion when making such requests, reduce the time between when a cold weather event occurs and a closure of the EEZ is implemented, and reduce the probability the pink shrimp component of the fishery is closed due to an overfishing or overfished status determination. As such, this proposed rule is not expected to generate any direct economic effects on commercial operations in the South Atlantic shrimp fishery. Therefore, no small entities would be directly affected by this rule.

As a result of the information above, a reduction in profits for a substantial number of small entities is not expected. Because this rule, if implemented, is not expected to

have a significant direct adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 14, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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